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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

TERRELL JONES, a California resident;  
MICHAEL JOHNSON, a Florida resident;  
DERRICK PAIGE, a Texas resident;  
WILFREDO BETANCOURT, a Nevada  
Resident; YOLANDA McBRAYER, a  
former Colorado resident; and MICHAEL  
PIERSON, a North Carolina resident,  
individually, and on behalf of all others  
similarly situated,

Plaintiffs,

vs.

AGILYSYS, INC., an Ohio corporation;  
AGILYSYS NV, LLC, a Delaware limited  
liability company; and DOES 1 through 100,  
inclusive,

Defendants.

Case No. CV12-3516 SBA

**COLLECTIVE ACTION**

**[UNOPPOSED]**

**DECLARATION OF ISAM C. KHOURY IN  
SUPPORT OF MOTION FOR ORDER  
GRANTING PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT,  
CONDITIONAL CERTIFICATION,  
APPROVAL OF CLASS NOTICE, AND  
SETTING OF FINAL FAIRNESS HEARING**

Date: November 26, 2013  
Time: 1:00 p.m.  
Dept: Courtroom 1 (Fourth Floor)  
Judge: Hon. Sandra B. Armstrong

Filed: July 6, 2012  
Trial date: None set

**COHELAN KHOURY & SINGER**

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Attorneys for Plaintiffs and the Putative Class

I, Isam C. Khoury, declare as follows:

1           1.       I am a Partner with the law firm of Cohelan Khoury & Singer, co-counsel of  
2 record for Plaintiff and the putative class in this matter. I am duly admitted to practice before  
3 all the courts of the state of California. The following facts are within my personal  
4 knowledge and if called to testify I could and would competently testify thereto.

5           2.       I am a 1973 Hastings School of Law graduate and was admitted to the  
6 California State Bar in 1974 and am admitted to practice in all state courts in California and  
7 in the following federal courts: The U.S. District Court for the Central District of California,  
8 the U.S. District Court for the Southern District of California, and the U.S. District Court for  
9 the Northern District of California. I have made appearances in numerous federal courts  
10 around the country as well as the First Circuit Court of the State of Hawaii. I am AV rated  
11 by Martindale-Hubbell, as are many attorneys in our firm.

12           3.       In 1981, Timothy D. Cohelan and I formed Cohelan & Khoury, a Partnership  
13 of Professional Law Corporations and within a few years began to focus on class actions. In  
14 2009, Cohelan & Khoury became Cohelan Khoury & Singer. Our firm represents plaintiffs  
15 in complex and class action litigation, including wage and hour, labor and employment,  
16 antitrust, consumer protection, construction defect and other public interest type class  
17 actions. Attached hereto, and incorporated herein by this reference as Exhibit 2 is a true and  
18 correct copy of our firm's resume.

19           4.       Cohelan Khoury & Singer is certified by the State Bar of California to  
20 provide the Mandatory Continuing Legal Education activity entitled "Litigating California  
21 Class Actions" and conducts MCLE certified seminars on this topic. Senior Partner, Timothy  
22 D. Cohelan, is the author of Cohelan on California Class Actions (Thomson West 1997-  
23 2013), part of Thomson West's Expert Series, which is updated annually. Managing Partner,  
24 Michael D. Singer, is a contributing author on the CEB publication California Wage and  
25 Hour Law: Compliance and Litigation (2010, updated annually), in which he wrote the  
26 opening chapter overview on California Wage and Hour laws, including the public policy  
27 underpinnings for those laws. Mr. Singer has served as a columnist for the California State  
28 Bar, Litigation Section on wage and hour litigation and has contributed articles on wage and

1 hour and class action issues through the years to numerous California publications. He  
2 lectures several times per year for continuing education courses on wage and hour and class  
3 action issues at events in San Diego, Orange County, Los Angeles, and San Francisco, and  
4 also serves as wage and hour amicus liaison for California Employment Lawyers, drafting,  
5 reviewing, and coordinating amicus filings on wage and hour issues in the California  
6 Supreme Court and Courts of Appeal. Mr. Singer has been engaged in the practice of labor  
7 and employment law since 2000, handling well over 100 wage and hour class actions and  
8 several individual labor cases, and has litigated several types of employment actions,  
9 including complex ERISA employee welfare benefit plan cases, as well as wage and hour  
10 class actions before Federal and State Courts in California. In addition, Mr. Singer has  
11 drafted numerous appellate briefs as the appellant, respondent, or amicus curiae in  
12 employment class and individual actions. As co-Class Counsel in the *Brinker Restaurant*  
13 *Corp. v. Superior Court* [(2008)165 Cal.App.4th 25] matter, he argued before the Fourth  
14 District Court of Appeal in May 2008 on transfer from the California Supreme Court, and co-  
15 authored the granted Petition for Review of the July 22, 2008 decision in the California  
16 Supreme Court, which was granted on October 22, 2008, oral argument heard on November  
17 8, 2011, ruling issued on April 12, 2012. Furthermore, Cohelan Khoury & Singer has  
18 successfully tried class cases, obtained appellate reversals of class certification denials (*Hicks*  
19 *v. Kaufman and Broad*, (2001) 89 Cal.App.4th 908), certified wage and hour classes, and has  
20 been appointed class counsel in dozens of cases.

21         5. As a part of our overall firm philosophy lawyers perform community service  
22 and pro bono work. Firm volunteer work includes service through the Legal Aid Society-  
23 Employment Law Center (LAS-ELC), San Diego Volunteer Lawyer Program (SDVLP),  
24 Consumer Attorneys of San Diego (CASD), and Voices for Children. Mr. Singer currently  
25 serves on the LAS-ELC Board of Directors. Mr. Cohelan currently serves on the Board of  
26 Directors for San Diego Volunteer Lawyers Program and completed 24 years of volunteer  
27 judicial service as a Judge Pro Tem of the San Diego Superior Court. Partner Diana M.  
28 Khoury has served on the Board of Directors for the Consumer Attorneys of San Diego since

1 2010, and has served and chaired numerous committees over the years for the Consumer  
2 Attorneys of California and the San Diego County Bar Association. Recent pro bono  
3 victories include a settlement with the City of San Diego which prohibits the City from  
4 targeting homeless persons for illegal lodging tickets under Penal Code Section 467(j).  
5 (*Spencer v. City of San Diego*, USDC Case No 04CV-2314 BEN (WMC).) The Parties, in  
6 Spencer, recently entered into a settlement that has the effect of increasing the number of  
7 available City of San Diego shelter beds.

8           6. Associates at the firm are encouraged to perform pro bono legal services.  
9 For example, Kimberly Neilson participated in a class action trial advocating on behalf of  
10 low-income tenants for local rent control ordinance violations which resulted in a verdict on  
11 the tenants' behalf. Ms. Neilson has been an active member of the San Diego County Bar  
12 Association, having served as a committee member; the Lawyers Club of San Diego, having  
13 served as a committee member and as a volunteer for the annual Women's Resource Fair;  
14 and, devotes approximately 10-15 hours each month volunteering and advocating on behalf  
15 of San Diego County foster youth with Voices for Children, the local affiliate of Court  
16 Appointed Special Advocates.

17           7. We consider ourselves experienced and qualified to evaluate the Class claims  
18 and viability of the defenses. This experience allowed our firm to achieve an efficient  
19 resolution of the claims in this matter.

## 20 **INTRODUCTION**

21           8. Plaintiffs Terrell Jones, Michael Johnson, Derrick Paige, Wilfredo  
22 Betancourt, Yolanda McBrayer, and Michael Pierson ("Plaintiffs") seek preliminary approval  
23 of a proposed Collective Action Settlement on behalf of Plaintiffs and the proposed Class of  
24 individuals employed by Defendants Agilysys, Inc., and Agilysys NV, LLC. ("Defendants"  
25 or "Agilysys") as Installation Specialists (the "IS" employees or positions), who were  
26 misclassified as "exempt" from the requirements of overtime wages under the Federal Labor  
27 Standards Act ("FLSA") at any time during the period from July 5, 2009 through March 4,  
28 2013. This wage and hour putative class action was filed pursuant to the FLSA and Federal

1 Rule of Civil Procedure (“FRCP”) Rule 23. The FLSA collective action involves a total of  
2 127 current and former IS employees.

3 9. Subject to Court approval, Plaintiffs and the putative Class have settled their  
4 FLSA claims against Defendants for the Gross Settlement Amount (“GSA”) of  
5 \$1,478,819.00, which sum includes payments for attorneys’ fees and litigation costs, claims  
6 administration expenses for dissemination of the Class notice and performing settlement  
7 administration, and the proposed Class Representative enhancement payment to each  
8 plaintiff. In addition to the GSA, Defendants will also pay the employer’s share of payroll  
9 taxes on the portion of the Settlement Payment to Authorized Claimants.

10 10. For purposes of the proposed Settlement, Plaintiffs now seek certification as  
11 a collective action under 216(b) of the FLSA, the appointment of Plaintiffs’ attorneys as  
12 Class Counsel, the appointment of Plaintiffs as the Class Representatives, and the  
13 appointment of the Rust Consulting, Inc. as the Claims Administrator to administer notice to  
14 the putative Class which will inform them of the proposed Settlement, their rights to opt-in  
15 into the FLSA Class, or object to the proposed Settlement. Plaintiffs also respectfully  
16 request that the Court set a date for a final fairness and approval hearing.

### 17 **BACKGROUND**

18 11. Defendants are reputed to be the leading developer and marketer of  
19 proprietary enterprise software, services and solutions to the hospitality and retail industries.  
20 Agilysys services casinos, resorts, hotels, food service venues, stadiums, cruise lines, grocery  
21 stores, convenient stores, general and specialty retail business and partners. Agilysys is a  
22 large multi-national corporation with locations nationwide, and develops customized  
23 software suites for large clients for Point-of-Sale (“POS”) revenue handling. In order to  
24 develop a client plan, other employees engage in “site surveys” that result in a detailed and  
25 pre-packaged plan, custom suited for the client’s business operations. Once the client  
26 purchases the software packet, it includes all necessary steps, including hardware, system,  
27 network and computer upgrades necessary to install Agilysys’ proprietary POS software and  
28 hardware, with numerous step-by-step “Installation and Upgrade Guides” which detail

1 virtually every aspect of the installation process to be followed by the IS employees.

2           12. Plaintiffs are former IS employee of Agilysys whose duties entailed the  
3 installation, configuration, troubleshooting and maintenance of pre-packaged specialized  
4 software sold by Defendants to large clients in the hospitality industry (i.e., casinos, hotels,  
5 cruise lines, etc.). As IS employees, Plaintiffs worked in one or more of the following  
6 positions during the relevant Class Period: (1) Application Support Specialist HS, (2)  
7 Application Support Specialist Sr. HS, (3) Installation Specialist HS, (4) Installation  
8 Specialists Sr. HR, (5) Remote Services Engineer I HS, (6) Solutions Engineer HS, or (7)  
9 Team Leader Installation HS (the “Covered Positions”). *See*, the Declarations of the six  
10 named Plaintiffs.)

11           13. Plaintiffs’ duties and responsibilities as IS employees were manual, routine,  
12 and repetitive. Their job was labor intensive and pre-determined by step-by-step  
13 “Installation Guides.” Thus, for those clients who only require software installation, the IS  
14 employees literally point, click and read the instructions to download and install software.  
15 On occasion, the site surveyor misses something, like the need for an operating system  
16 upgrade in order for the Agilysys software to work properly, which then gets re-submitted  
17 and included in the installation. The IS employees do not engage in any selection of  
18 software, hardware, system or application for any of Agilysys’ clients as this is all done by  
19 the sales and site surveyors. At its core, the IS employees are a technician position, with no  
20 significant discretion or independent judgment. The IS employees were to merely follow the  
21 installation guide, configure, set-up, and troubleshoot Agilysys’ software package. Problems  
22 with the software or the need for patchwork for any missing steps in the installation guide are  
23 addressed by developers or the site-surveyor, not the IS employees. In general, once IS  
24 employees were sufficiently trained on the software and installation guides in various types  
25 of hospitality groups, they were trained to be site surveyors to move into more refined  
26 company positions with less manual work and more client development. The IS position did  
27 not require any advanced degree, licensure or state sanctioned certification. A basic ability  
28 to follow the specifications is all that was required to be a successful installer.



1           14.     During the Class Period, Defendants' normal business hours were 8 a.m. to 5  
2 p.m., Monday through Friday. Plaintiffs and the IS employees, however, worked beyond  
3 these regular hours and days due to the nature of their work and the nature of their  
4 hospitality-industry clients' work. The IS employees were expected to be flexible in relation  
5 to the clients' schedule to minimize the interruption of the clients' business which resulted in  
6 working odd hours at low impact times to conduct the installation and configuration process.  
7 The IS employees worked nights and weekends, and were expected to travel with little  
8 advance notice; otherwise, they would be subject to disciplinary action, including  
9 termination. For example, a cruise ship only wanted its Point of Sale ("POS") software  
10 installed in the early morning hours after most of its casino operations were minimal. The  
11 same was true for other hotels, resorts and casinos, which would require system installations  
12 at low-peak times. The Plaintiffs reported substantial weekly overtime hours worked.

13           15.     Furthermore, Plaintiffs contend that they and other IS employees were not  
14 permitted to record all of their time worked.

15           16.     According to Defendants' employee manual, "[e]xempt employees are  
16 required to complete a time card on an *exception basis only*" and are "exempt from the  
17 overtime provisions of the [FLSA]." Plaintiffs contend that all IS employees were directed to  
18 stop recording the actual hours they worked, and instead to insert the amount of hours they  
19 were budgeted to work that day: "The rule of thumb should be 8 hours budgeted each day  
20 onsite." Plaintiffs were instructed to record 8 hours per any day for billable time to clients,  
21 even if the daily work was 9, 10 or more hours of actual work.

22           17.     The result was that Agilysys did not have any accurate measure of total hours  
23 worked necessary to show whether or not, on an hourly basis, it ever satisfied basic salary  
24 thresholds for Plaintiffs and/or the Class. For some IS employees, whose wages started  
25 around \$16/hour or less, if actual work time were tracked, they did not meet the FLSA  
26 requirements because the hourly rate/wages were diluted by overtime hours worked.

#### 27           **HISTORY OF LITIGATION/PROCEDURAL BACKGROUND**

28           18.     On or about July 5, 2012, Plaintiffs filed the action *Jones, et al. v. Agilysys*,



1 *Inc., et al.*, Case No. CV-12-3516, in the U.S.D.C. for the Northern District of California, on  
2 behalf of current and former IS employees of Defendants. Defendants employed IS  
3 employees in California, as well as throughout the United States. Plaintiffs contend that  
4 during the relevant Class Periods, the IS employees were misclassified as exempt from the  
5 overtime provisions of the FLSA and the applicable state wage and hour laws of California,  
6 Nevada, Florida, Texas, Colorado, and North Carolina. The initial Collective and Class  
7 Action Complaint (“Complaint”) asserted seven causes of action on behalf of a putative class  
8 under the FLSA and six putative state law classes pursuant to FRCP Rule 23 for unpaid  
9 overtime. The California plaintiff, Terrell Jones, also sought to certify six subclasses within  
10 the California Class for: (1) failure to pay premium wages for noncompliant meal and rest  
11 periods in violation of California Labor Code §§ 226.7 and 512; (2) failure to provide  
12 accurate wage statements in violation of California Labor Code §§ 226 and 1174; (3) failure  
13 to timely pay wages upon termination in violation of California Labor Code §§ 201-203; (4)  
14 failure to reimburse necessary business expenses in violation of California Labor Code §§  
15 2802; and (5) unfair competition in violation of California Business & Professions Code §  
16 17200, *et seq.*

17 19. With the issuance of the Summons, the Court issued an Order assigning the  
18 matter to the Honorable Donna M. Ryu and setting an Initial Case Management Conference  
19 for October 10, 2012.

20 20. On or about July 6, 2012, Plaintiffs mailed a certified letter to the LWDA  
21 providing notice of alleged Labor Code violations pursuant to California Labor Code §  
22 2699(f).

23 21. On or about July 25, 2012, Defendants filed a Declination to Proceed before  
24 a Magistrate Judge and Request for Reassignment to a United States District Judge. In  
25 addition, the Parties submitted a Stipulation Extending Time for Defendants to respond or  
26 otherwise plead to the Complaint from July 27, 2012 to August 26, 2012.

27 22. On or about July 27, 2012, the Court issued an Order Reassigning the matter  
28 to the Honorable Sandra Brown Armstrong for all further proceedings.

1           23.     On or about July 30, 2012, the Court issued a Case Management Scheduling  
2 Order setting a telephonic Case Management Conference (“CMC”) for October 10, 2012.

3           24.     Without indication from the LWDA that it intended to investigate the alleged  
4 violations, on or about August 9, 2012, Plaintiffs, on behalf of themselves and all other  
5 similarly situated aggrieved current and former employees of Defendants, filed a First  
6 Amended Complaint (the “Operative Complaint”) re-asserting the aforementioned claims and  
7 adding an eighth cause of action for alleged violations of the PAGA.

8           25.     On or about August 23, 2012, the Parties filed a Joint Stipulation and Motion  
9 to Extend Time to File a Responsive Pleading to the Operative Complaint, which requested  
10 that the Court extend Defendants’ deadline to file a response to the Operative Complaint  
11 from August 25 to September 26. The request was granted.

12           26.     Despite their diligent efforts to meet and confer about the scope and  
13 substance of the allegations in the Operative Complaint, the Parties required more time to  
14 exchange information and to discuss the issues in an effort to avoid unnecessary motion  
15 practice. On or about September 19, 2012, the Parties filed a Joint Motion requesting an  
16 additional extension of the deadline for Defendants to respond to the Operative Complaint, as  
17 well as a continuance of the CMC.

18           27.     On or about September 21, 2012, the Court entered an Order extending  
19 Defendants’ deadline to respond to the Operative Complaint to October 26, and continued the  
20 CMC to December 6.

21           28.     With continued meet and confer discussions, an agreement to mediate the  
22 matter by February 2013 was achieved by the parties. Accordingly, on October 25, 2012, a  
23 Stipulation and Joint Motion was filed requesting the Court to stay all proceedings, including  
24 the CMC, and the Rule 26 deadlines, and to toll the statute of limitations (“SOL”) for  
25 Plaintiffs’ FLSA claims until 30 days after the completion of mediation.

26           29.     On or about October 26, 2012, the Court issued an Order (1) staying all  
27 proceedings in the action until March 15, 2013; (2) tolling the SOL on Plaintiffs’ FLSA  
28 claims for the duration of the stay; and (3) continuing the CMC to March 20, 2013.

1           30.     The Parties appeared before Mark Rudy, an experienced and renowned wage  
2 and hour mediator. Unfortunately, the Parties were unable to reach an agreement by day's  
3 end. As set forth in the next section, a mediator's proposal was issued and accepted by both  
4 sides on March 4, 2013. On March 7, the Parties engaged in a post-mediation conference to  
5 discuss issues relating to the preparation of the Agreement, incentive payments for Plaintiffs,  
6 multiplier for the California Class, the deadline to file this motion, and the continued tolling  
7 of the FLSA SOL. In that same conference, the parties agreed to enter into a stipulation to  
8 continue the CMC, toll the FLSA SOL, and set a deadline to file this motion.

9           31.     Pursuant to the parties' stipulation, on or about March 12, 2013, the Court  
10 issued an Order (1) vacating the March 20 CMC; (2) extending the tolling of the FLSA SOL  
11 until 30-days after entry of an order granting final approval of the settlement; and (3) initially  
12 setting a May 7 deadline for filing this motion (which was continued to June 6 pursuant to  
13 stipulation and order).

14           32.     With sufficient investigation, research, document analysis and extrapolation  
15 of class-wide damages, on or about February 28, 2013, the Parties engaged in serious and  
16 informed arms-length negotiations before Mr. Rudy, a respected and experienced wage and  
17 hour mediator in San Francisco, California. Although the matter did not settle on this date,  
18 signification progress towards reaching an agreement was accomplished. On March 1, Mr.  
19 Rudy provided the parties with a mediator's proposal, setting forth the principal terms of the  
20 Settlement Agreement, which was accepted by the parties on March 4.

21           33.     On June 6, 2013, Plaintiffs previously filed a motion for preliminary  
22 approval of a class settlement. The motion asked the Court to approve two settlement  
23 classes: (1) a national FLSA class and (2) a Rule 23 California Class. On August 15, 2013,  
24 the Court denied Plaintiffs' motion on the grounds that the California settlement class failed  
25 to satisfy Rule 23's numerosity requirement.

26           34.     On or about October 9, 2013, the Parties agreed to enter into an amended  
27 class settlement agreement based on a single nationwide FLSA class, and which they present  
28 now for preliminary approval. The proposed settlement is memorialized in the Amended

1 Settlement Agreement presented now for preliminary approval, a true and correct copy of  
2 which is attached hereto as Exhibit 1.

### 3 **SUMMARY OF PROPOSED SETTLEMENT TERMS**

4 35. The Parties have agreed (subject to and contingent upon approval of this  
5 Court), that this action be settled and compromised for the GSA of \$1,478,819.00, which sum  
6 includes (a) attorneys' fees in an amount not to exceed 25% of the GSA or rather  
7 \$369,704.75; (b) litigation costs estimated at \$25,000; (c) Class Representative Payment of  
8 up to \$5,000 for each of the six named Plaintiffs; and (d) claims administration expenses to  
9 Rust Consulting, Inc., estimated at \$16,500.

10 36. After all Court-approved deductions, the remaining sum ( "NSA") estimated  
11 at \$1,037,614.25 will be distributed to all Class Members who return valid and timely Claim  
12 Forms/FLSA Consent to Join Forms ("Claim Form"). In addition to the GSA, Defendants  
13 will also pay the employer's share of applicable taxes on the portion of the participating  
14 Class Member's Settlement Payment allocated to wages.

15 37. The Settlement Payments to participating Class Members are characterized as  
16 67% wages for which an IRS W-2 form will be issued, and 34% as penalties and interest for  
17 which an IRS 1099 form will be issued.

18 38. All unclaimed shares of the NSA by a Class Member will be redistributed  
19 proportionately among the Participating Class Members. No portion of the Settlement will  
20 revert to Defendants.

21 39. Participating (or "Authorized") Class Members will receive their  
22 proportionate share of the NSA based upon the number of weeks he or she worked during the  
23 relevant Class Period in relation to the number of weeks worked by all members of the Class.

24 40. With an estimated 12,973 weeks worked by the 127 Class Members, each  
25 Participating Class Member can expect to receive an estimated \$79.98, less taxes, for each  
26 week worked during the Class Period. Based on the estimated rate, and assuming that all  
27 members of the Class participate in the Settlement, if a Class Member worked the entire  
28 Class Period, he or she could expect to receive an estimated \$15,287.61 less taxes.

1           41.     Participating Class Members, (those who return a Claim Form/FLSA Consent  
2 to Join form) will release any and all actions, causes of action, grievances, obligations, costs,  
3 expenses, damages, losses, claims, liabilities, suits, debts, demands, and benefits (including  
4 attorneys' fees and costs actually incurred), of whatever character, in law or in equity, known  
5 or unknown, asserted, whether in tort, contract, or for violation of any state or federal statute,  
6 rule or regulation, including state or federal wage and hour laws, whether for economic  
7 damages, non-economic damages, restitution, penalties, or liquidated damages arising out of  
8 or related to the claims and facts asserted in the Action including, without limitation, claims  
9 based on the allegations in the First Amended Complaint for failure to pay overtime in  
10 violation of the FLSA, 29 U.S.C. §§ 201-219.

11           42.     Class Members can only be bound by the judgment and Release of Claims  
12 when he/she returns a Claim Form.

13           43.     Rust Consulting, Inc., the Claims Administrator selected by the Parties, will  
14 conduct a search of the National Change of Address database to update Class Member  
15 addresses, and will thereafter mail to each Class Member identified by Defendants'  
16 employment records, a Notice of Class Action Settlement ("Notice"), Claim Form/FLSA  
17 Consent Form ("Claim Form"), and a pre-printed, postage paid return envelope, (collectively  
18 "Notice Packet").

19           44.     The proposed Notice advises the Class of their rights (1) to participate in the  
20 proposed Settlement with the return of a Claim Form, (2) to object to the Settlement or to any  
21 of its terms, (3) to dispute the number of weeks worked shown in their Claim Forms upon  
22 which their Settlement Payment will be based, and (4) for each of the foregoing actions, the  
23 manner and deadline date for doing so. The Notice also informs the Class of the date of the  
24 final fairness hearing.

25           45.     The Claim Form contains the Class Member's personalized information such  
26 as his/her name, address, dates of employment, the number of weeks worked during the Class  
27 Period, and the estimated payment he/she could expect to receive if they returned a signed,  
28 dated, and timely Claim Form.

1           46. To encourage claim form submissions, the Settlement also provides for a  
2 postcard to be mailed 30 days after the initial mailing by the Claims Administrator to all  
3 Class members who have not by that date returned a Claim Form to remind them of the  
4 deadline date to submit a Claim Form.

5           **THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS**

6           47. The Settlement was reached as a result of the arms'-length negotiations  
7 facilitated by an experienced and well-respected mediator.

8           48. Through cordial and professional, the settlement negotiations have been, at  
9 all times, adversarial and non-collusive in nature. Continued good faith, but occasionally  
10 contentious, negotiations were required to ultimately reach agreement. While Plaintiffs  
11 believe in the merits of their case, they also recognize the inherent risks and uncertainty of  
12 litigation and understand the benefit of providing a significant settlement sum now as  
13 opposed to risking (i) denial of the FLSA collective action certification; and/or (ii) an  
14 unfavorable result on the merits on summary judgment or at trial and/or on an appeal, a  
15 process that can take several more years to litigate.

16           49. Plaintiffs' claims involve complex and disputed legal issues and fact-specific  
17 arguments which the Parties have litigated fiercely since inception of the action. Plaintiffs  
18 firmly believe in the strength of their claims, but Agilysys also has strong defenses to  
19 liability. There are also significant risks to Plaintiffs' ability to maintain conditional  
20 certification of a collective action.

21           50. The FLSA claims for the alleged failure to pay overtime wages to the Class  
22 by instructing them to not report all hours worked would involve representative sampling and  
23 testimony of Class Members and of Defendants' management in offices around the country in  
24 light of the lack of written evidence to support such claims.

25           51. Although Defendants believe Plaintiffs will face several steep hurdles going  
26 forward should this matter not resolve, it is also mindful that there are risks and significant  
27 expenses associated with proceeding further in the case.

28           52. The proposed Settlement is the product of substantial effort by the Parties.

1 As a threshold matter, the factual investigation conducted both before the Action was filed  
2 and which continued thereafter was quite robust. Before the Parties appeared at mediation, a  
3 substantial amount of information and documents had been informally exchanged which  
4 resulted in sufficient data and information to allow Plaintiffs to extrapolate class-wide  
5 damages and to participate in a meaningful mediation.

6 53. The Parties have thoroughly investigated and evaluated the factual strengths  
7 and weaknesses of this case and engaged in sufficient investigation and discovery reflected in  
8 the motion and in the paragraphs below to support the Settlement.

9 54. Based upon information obtained from the Plaintiffs and from other putative  
10 Class Members regarding the number of overtime hours they worked, the Classes' blended  
11 hourly overtime rate of \$37.95, and the 12,973 discrete number of weeks worked by the Class  
12 produced by Defendants, Class Counsel estimated the value of each overtime hour to be  
13 \$492,325.35. Assuming the Class worked anywhere from five to ten hours of overtime per  
14 week, Defendants' liability was estimated to be in the range of \$2,461,626.75 to  
15 \$4,923,253.50.

16 55. Plaintiffs' estimate of the overtime exposure was subject to rational  
17 discounting in light of Defendants' legal argument concerning obstacles to certification,  
18 asserting that recent decisions, such as *Dukes*, would make certification unlikely for  
19 Plaintiffs, and their assertion that aggregate overtime hours worked based upon information  
20 from Plaintiffs and the other informal interviews was unreliable and inaccurate; further that  
21 there were many weeks wherein the IS worked from home and did not accrue overtime; and  
22 that Defendants paid Class Members their full salaries even when they were not on specific  
23 assignments; and that the overtime hours fluctuated, with most of them occurring on cruise  
24 ships which directed that most of the work be completed outside of ships' operating hours to  
25 minimize disruption of their revenue stream. With regard to the hours worked on cruise  
26 ships while in international waters and/or in foreign countries, Defendants vehemently  
27 contended that neither state or federal laws would be applied to allow Plaintiffs' claims for  
28 overtime worked.



1           56.     The proposed non-reversionary Settlement of \$1,478,819 is 60% to 30%, of  
2 the estimated potential liability ranging from \$2,461,626.75 to \$4,923,253.50, respectively.  
3 This range is very reasonable in light of the risks of obtaining an unfavorable decision on  
4 certification, summary judgment or trial.

5           57.     The overall assessment of claim viability, even assuming certification,  
6 presented several significant difficulties which included (1) the risk of losing at trial and (2)  
7 the lack of willingness to participate by some current employees whose role beyond an absent  
8 class member (such as a testifying witness or declarant) would cause them to hesitate to  
9 assist in the case for fear, whether real or imagined, of retaliation.

10          58.     While Plaintiffs' counsel is firmly convinced that there is general accord that  
11 the types of work being performed by the Class are now generally accepted to not be exempt  
12 task-work, this is not a given and the systems and specialized platforms that Agilysys  
13 deploys for its clients could cause a lay jury to find that the work was sufficiently  
14 discretionary and required specialized knowledge such that the Class, even certified, could  
15 lose and gain nothing at trial.

16          59.     A fair settlement such as this, which provides a certain payout that accounts  
17 for an approximation of work offers a way for Agilysys to avoid costly further litigation and  
18 for Class Members, including current employees, to receive certain compensation without  
19 attenuated circumstances inherent in the employer-employee relationship.

20          60.     In the face of these uncertainties, the Parties agreed to a compromise non-  
21 reversionary settlement of \$1,478,819.00 for the 127 Class Members which will pay an  
22 estimated **\$79.98** for each week worked by a Class Member during the Class Period.

23                   **DISCOVERY AND INVESTIGATION**

24          61.     Substantial investigation, legal research and interviews with Plaintiffs and  
25 other putative Class Members took place prior to the filing of this class action. Defendants  
26 operate multiple offices throughout California and the United States in which it employs IS  
27 employees, including Arizona, Florida, Georgia, Maryland, Mississippi, North Dakota, New  
28 Jersey, Nevada, New York, Oregon, Pennsylvania, Texas, Virginia, Washington, and West

1 Virginia. Six class representatives were located and retained to represent the FLSA Class.  
2 Due to the numerous states involved, significant legal research had to be performed to  
3 determine the applicable exemptions, overtime requirements, available remedies, and statute  
4 of limitations (“SOLs”) of each state.

5 62. Plaintiffs, and other putative Class Members, were interviewed to ascertain their  
6 duties and method of compensation to determine whether the IS employees fell within the  
7 Computer Professional or Administrative exemptions. Their duties were then compared to the  
8 applicable state and federal laws and regulations to determine whether their duties met the  
9 respective tests. In addition, Plaintiffs, and other putative class members, were interviewed to  
10 determine the amount of overtime hours they worked and requested to produce documents in their  
11 possession which supported their claims.

12 63. In response, Plaintiffs, as well as other putative class members, produced to  
13 Plaintiffs’ counsel over 7,000 pages of documents and electronic data which included, among  
14 other things: (1) Defendants’ employee handbook; (2) written job descriptions of IS employees;  
15 (3) timesheets and timecards; (4) emails; (5) policies relating to travel, comp days, recordation of  
16 hours and expenses; (6) paycheck stubs; (7) project schedules; (8) installation schedules; (9)  
17 project and status reports; (10) site surveys; (11) travel receipts; (12) expense reports; (13)  
18 performance reviews; (14) installation or configuration manuals and guides; and (10) a related  
19 prior class action lawsuit. Plaintiffs’ counsel painstakingly reviewed each of the documents  
20 produced to ensure a complete investigation and with an eye towards successfully proving the  
21 allegations contained in the Operative Complaint on a class-wide basis. This initial workup and  
22 acquisition of documents proved crucial in the successful prosecution of this class action.

23 64. Subsequent to the filing of the Operative Complaint, the Parties engaged in  
24 extensive cooperative informal discovery and the exchange of documents and information. In  
25 addition to the documents produced by Plaintiffs, Defendants provided extensive documents and  
26 thousands of pages of putative class data to Plaintiffs and Class Counsel to review and analyze.  
27 This information included employment data for the entire putative Class, policies and documents  
28 relevant to the issues in the litigation, and Plaintiffs’ wage statements, expense reports, and

1 personnel files.

2 65. On September 21, 2012, Defendants produced Plaintiffs' personnel records,  
3 which totaled 665 pages.

4 66. On January 8, 2013, Defendants produced an additional 548 pages of documents  
5 consisting of job descriptions for the IS employees and redacted Class data for employees who  
6 held IS positions, as well as expense report data, billable hour data, and wage statements of the  
7 Plaintiffs. This information was also provided in three separate MS Excel spreadsheets,  
8 containing over 5,500 lines of combined data.

9 67. On January 17, 2013, after meeting-and-conferring regarding the scope of the  
10 putative Class and which job titles encompass the Class, Defendants provided Plaintiffs with an  
11 additional 24 pages of documents, comprising of job descriptions and redacted Class data for the  
12 IS positions.

13 68. Also provided to Plaintiffs on January 17, 2013 was a MS Excel spreadsheet  
14 made up of 718 lines of data representing: (1) employee ID; (2) employment State; (3) last and  
15 original hire dates; (4) seniority date; (5) termination date; (6) status as of 12/26/2012; (7) length  
16 of service in weeks; (8) job begin and job end dates; (9) division; (10) location; and (11) job title.  
17 Through manipulation of this spreadsheet data, Plaintiffs were able to determine the number of  
18 unique employee ID numbers (prospective Class Members), the number of current and former  
19 employees, and the number of eligible workweeks through December 2012.

20 69. On February 20, 2013, Defendants produced 64 more pages of Plaintiffs' time  
21 sheets for the May 2011 through September 2011 time period.

22 70. Plaintiffs were able to use the data provided by Defendants, as well as the  
23 information gathered from Plaintiffs, to calculate for the Class Period, the estimated number of  
24 workweeks, the average hourly, overtime and double-time rates of pay, and the average hours of  
25 overtime worked each week. This information was then used to create Plaintiffs' mediation  
26 damage model and calculate the amount of unpaid overtime wages owed to class members during  
27 the Class Period. All of the information obtained during the investigative and discovery phase,  
28 allowed the Parties to prepare for a class-wide damage model and to prepare for a meaningful

1 mediation on February 28, 2013.

2 **EXPERIENCE OF COUNSEL**

3 71. Class Counsel, Cohelan, Khoury & Singer has had significant experience in  
4 litigating misclassification, overtime, expense reimbursement, and rest/meal period cases,  
5 and other wage and hour class cases and have obtained certification in these types of cases in  
6 Orange County Superior Court, (before the Hon. David C. Velasquez, and the Hon. Jonathan  
7 Cannon), in the Sacramento Superior Court, (before the Hon. Raymond Cadei), in the United  
8 States District Court for the Southern District of California, (before the Hon. Judge Marilyn  
9 Huff and before the Hon. Janis Sammartino), and in San Diego County Superior Court  
10 (before the Hon. Linda B. Quinn, the Hon. Patricia A. Cowett, Hon. Timothy Taylor, and the  
11 Hon. Steven Denton).

12 72. Likewise, Class Counsel, Bisnar & Chase have had significant experience  
13 litigating misclassification, overtime, expense reimbursement, rest and meal period, and other  
14 wage and hour class cases.

15 73. Defendants' counsel, Francis J. Ortman, III, and Robb D. McFadden of  
16 Seyfarth Shaw also are particularly experienced in wage and hour employment law and class  
17 actions.

18 74. Class Counsel having prosecuted numerous cases on behalf of employees for  
19 FLSA violations are experienced and qualified to evaluate the Class claims and to evaluate  
20 settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses.

21 **CLASS COUNSELS' FEES REQUEST/CLASS REPRESENTATIVE PAYMENTS**

22 75. Class Counsels' attorneys' fees and litigation costs incurred pursuing the  
23 litigation of this action will also be paid from the GSA. Class Counsel will file a motion  
24 requesting reimbursement of their litigation expenses and an award of fees (limited to 25% of  
25 the GSA) 15 days prior to the deadline for the Class to file objections. The motion for  
26 attorneys' fees and costs will detail the hours expended and the litigation expenses advanced.

27 76. Subject to the Court's approval at the time of the final fairness hearing, Class  
28 Counsel will request on behalf of each named Plaintiff the modest sum of \$5,000 for their

1 time, effort, risks undertaken for the payment of costs in the event this action had been  
2 unsuccessful, stigma upon future employment opportunities for having initiated this action  
3 against a former employer, and a general release of all claims related to their employment,  
4 which release is broader than the release given by the Class. The requested Class  
5 Representative Payments are fair and reasonable because each was instrumental in this  
6 litigation and in achieving the settlement in this case. Each Plaintiff invested a great deal of  
7 personal time and effort into the investigation, prosecution, and the settlement of the case, as  
8 set forth in their respective declarations filed concurrently herewith. The Class  
9 Representative Payment of \$5,000 each is fair and reasonable.

### 10 CONCLUSION

11 77. Counsel on both sides share the view that this is a fair and reasonable  
12 settlement in light of the complexities of the case, the state of the law, and of the  
13 uncertainties of certification and litigation. The opinion of counsel in support of the  
14 proposed Settlement is based on a realistic assessment of the strengths and weaknesses of  
15 their respective cases, extensive legal and factual research, as well as substantial discovery.  
16 The opinion of counsel is also based on an assessment of the risks of proceeding with the  
17 litigation through trial and, if a verdict were recovered, through appeal as compared to the  
18 certain value of a settlement at this time. Given the risks inherent in litigation and the  
19 defenses asserted, this Settlement is fair, adequate, and reasonable and in the best interests of  
20 the class, and should be preliminarily approved.

21 78. No group or member of the proposed class is discriminated against under the  
22 terms of the proposed Settlement. Nor does the proposed Class Action Settlement Agreement  
23 require a bonus to the named Plaintiffs or counsel for the proposed class. It provides only  
24 that counsel for the proposed class may apply to the Court for an award of their attorneys'  
25 fees and a reimbursement of their expenses and costs, including the costs of administration,  
26 and that the named Plaintiffs may apply for an enhancement award incurred in connection  
27 with the prosecution of this action. The proposed Class Action Settlement Agreement does  
28 not condition the settlement on the Court's issuance of any such awards.

